

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.N.BASHA

CRL.O.P.No.28077 of 2006
& M.P.No.1 of 2006

C.H.V.Appa Rao

.. Petitioner/Petitioner

Vs.

M/s.A.R.K.Film Enterprises,
Rep. by its Partner,
Mr.T.A.Aulpathy,
New No.133 (Old No.62-A),
G.N.Chetty Road,
Theagaraya Nagar,
Chennai - 600 017.

... Respondent/Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to call for the records in C.C.No.3670 of 2005 on the file of XIV Metropolitan Magistrate Court, Egmore, Chennai, and quash the same.

For Petitioner : Mr.P.Sukumar
For Respondent : Mr.E.Balaji,
for M/s.Waraon & Sairams

O R D E R

The learned counsel for the petitioner submitted that the petitioner has come forward with this petition seeking for the relief of quashing the proceedings initiated against the petitioner for the alleged offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act").

2. The learned counsel for the petitioner submitted that the case relating to the dishonour of three cheques, viz., (1) Cheque No.0469484 dated 27.07.2004 for a sum of Rs.5,00,000/-, (2) Cheque No.0469485 dated 10.08.2004 for a sum of Rs.7,00,000/- and (3) Cheque No.0469486 dated 25.08.2004 for a sum of Rs.7,50,000/-. It is submitted by the learned counsel for the petitioner that the allegation of the complainant is that all the three cheques were presented before their bankers and the cheques were dishonoured on the ground of "funds insufficient". It is contended by the learned counsel for the petitioner that the complainant after receiving the bank memo dated 03.09.2004 sent a statutory notice dated 08.09.2004 calling upon the petitioner to pay the amount towards the dishonoured cheques. The learned counsel for the petitioner contended that after sending the notice, the respondent/complainant has not taken any steps to file the complaint for the alleged offence under

Section 138 of the Act. It is submitted by the learned counsel for the petitioner that with a view to overcome the infirmity and lacuna and in order to save the period of limitation as contemplated under Section 138 of the Act, the respondent/complainant once again presented the above said three cheques on 20.01.2004 in their bankers and all the three cheques were said to have dishonoured once again and thereafter, issued a second statutory notice dated 27.11.2004 under Section 138 of the Act calling upon the petitioner to pay the amount towards the dishonoured cheques.

3. It is submitted by the learned counsel for the petitioner that the learned counsel for the petitioner that in view of filing the complaint on the basis of the second notice, the complaint itself is barred by limitation. The learned counsel for the petitioner also placed reliance on the following decisions of the Hon'ble Supreme Court :

- i. SADANANDAN BHADRAN V. MADHAVAN SUNIL KUMAR reported in AIR 1998 SC 3043 ;
- ii. PREM CHAND VIJAY KUMAR V. YASHPAL SINGH AND ANOTHER reported in (2005) 4 SCC 417 ;
- iii. DALMIA CEMENT (BHARAT) LTD. V. GALAXY TRADERS & AGENCIES LTD. reported in (2001) 6 SCC 463

4. Per contra, learned counsel for the respondent/complainant contended that there is no infirmity or illegality in the complaint preferred by the respondent/complainant. It is submitted by the learned counsel for the respondent that the first notice said to have been sent by the respondent/complainant dated 08.09.2004 is only by way of telegram and as such the first notice cannot be construed to be a statutory notice as contemplated under Section 138 of the Act. Therefore, it is submitted by the learned counsel for the respondent that only the present notice dated 27.11.2004 alone should be construed and considered as statutory notice and as such the complaint is filed well within the time and the same is not barred by limitation.

5. I have carefully considered the rival contentions put forward by either side and also perused the complaint copy in this case.

6. It is seen that the petitioner is facing trial for the alleged offence under Section 138 of the Act. The only ground raised by the petitioner for quash the proceedings is that the respondent/complainant preferred the complaint only on the basis of the issue of second statutory notice dated 27.11.2004 and as such the same is barred by limitation in view of the admitted fact that the respondent/complainant has not taken any steps to file the complaint after issuing the first notice dated 08.09.2004. It is contended by the learned counsel for the petitioner that the cause of action arose from the date of receiving statutory notice dated 08.09.2004 by the petitioner herein.

7. The learned counsel for the petitioner has also rightly placed reliance on the decisions of the Hon'ble Supreme Court in SADANANDAN BHADRAN V. MADHAVAN SUNIL KUMAR reported in AIR 1998 SC 3043 wherein the Hon'ble Apex Court has held as follows:

"... clause (a) of the proviso to Section 138 did not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. On each presentation of the cheque and its dishonour a fresh right and not cause of action accrues. The payee or holder of the cheque may, therefore, without taking pre-emptory action in exercise of his right under clause (b) of Section 138 of the Act, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But once a notice under clause (b) of Section 138 of the Act is 'received' by the drawer of the cheque, the payee or the holder of the cheque forfeits his right to again present the cheque as cause of action has accrued when there was failure to pay the amount within the prescribed period and the period of limitation starts to run which cannot be stopped on any account...".

Subsequently, in the latest decision in PREM CHAND VIJAY KUMAR V. YASHPAL SINGH AND ANOTHER reported in (2005) 4 SCC 417, the Honourable Supreme Court has considered the decisions rendered by the Apex Court earlier in SADANANDAN BHADRAN V. MADHAVAN SUNIL KUMAR (AIR 1998 SC 3043) and DALMIA CEMENT (BHARAT) LTD. V. GALAXY TRADERS & AGENCIES LTD. reported in (2001) 6 SCC 463. In that decision the Apex Court held that,

"It is well settled that if dishonour of a cheque has once snowballed into a cause of action it is not permissible for a payee to create another cause of action with the same cheque. The period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer expires".

8. Therefore, the above said well settled principle of law laid down by the Hon'ble Apex Court is squarely applicable to the facts of the instant case and as such, the complaint preferred by the complainant/ respondent is liable to be quashed. The contention put forward by the learned counsel for the respondent that the first notice dated 08.09.2004 was sent by the respondent only through telegram and as such, the same cannot be construed as statutory notice, as contemplated under Section 138 of the Act, is unacceptable and unsustainable in law.

9. This Court in V.P.Revathi v. Asha Bagree, Director, M/s.B.M.Steels reported in 1991-L.W. (Cr1.) 468 has held as follows :

".. "Notice in writing" which is required under S.138(b) of Negotiable Instruments Act need not necessarily be only by registered post, and it can as well be a telegram or by a letter."

10. In yet another decision in Kannan V. Kothandan reported in 1995 MLJ (NOR) 35 this Court has held as follows :

Proviso to Sec.138 of the Negotiable Instruments Act, must be in writing and there is no further prescription with regard to the mode of despatch and service of such notice on the drawer of such cheque. Therefore, there can be no prohibition for such a notice to be despatched through post registered or otherwise or by telegram or served in person by himself or through a special messenger."

11. The Delhi High Court in Yoginder Kumar Sharma v. Ashok Kumar Sharma & Anr. reported in 2000 (1) Crimes 471 has held as follows :

"Telegraphic demand of amount covering dishonoured cheque can be regarded as notice within the meaning of clause (b) of proviso to Section 138 of the Act."

12. This Court, in two other decisions in Pattabirama Reddy v. Nageshwara Reddy reported in 2001-2-L.W.(Crl.) 781 (Justice B.Akbar Basha Khadhiri) and in M.Murugan v. Queen Jhansi Vetrikodi reported in 2004 (2) CTC 530 (Justice A.Packiaraj), has held that telegraphic notice is not a valid notice. This Court is constrained to state that those two decisions are rendered on the basis of peculiar facts and circumstances of those cases. In the first case, Justice B.Akbar Basha Khadhiri held that the complainant has not produced the certified copy of the telegram and as such no probative value could be attached to such telegram. In the decision rendered by Justice A.Packiaraj, it was held by His Lordship that "telegram by itself is not Authenticated document unless it is confirmed by subsequent signed application." In that case the complainant has not produced any material to authenticate the issuance of telegraphic notice. Therefore, in view of the categorical view taken by this Court as well as the decision rendered by the Delhi High Court, this Court has no hesitation to hold that there can be no prohibition for despatching statutory notice under Section 138 of the Act through registered post or by telegram or through a special messenger as Section 138 of the Act does not prescribe any particular form or mode of despatch for service of notice.

13. As far as this case is concerned, as it is already pointed out that the complainant himself has chosen to send the first notice through telegram and sending such notice is also not disputed by him and as such, there is no difficulty in arriving at the conclusion that the first notice sent through telegram is to be construed as a statutory notice under Section 138 of the Act. Therefore, in this case, the first notice sent and served through telegram dated 09.08.2004 and the complainant has not initiated any action under Section 138 of the Act by filing the complaint, on the other hand, with a view to fill up the lacuna, the complainant presented the cheques once again and on the dishonour of those cheques, issued a second statutory notice dated 27.11.2004 and only on the basis of serving second statutory notice, the present complaint is filed by the complainant herein. Therefore, it is crystal clear that the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer expires and as such, the present complaint is clearly barred by limitation as the same is filed only on the basis of service of second

statutory notice.

14. For the aforesaid reasons, the proceedings initiated against the petitioner for the offence under Section 138 of the Act in C.C.No.3670 of 2005 on the file of the learned XIV Metropolitan Magistrate Court, Egmore, Chennai, is quashed.

This petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The XIV Metropolitan Magistrate,
Egmore, Chennai.

2. -do- Thro. The Chief Judicial Magistrate
Egmore, Chennai.

+ 1 cc to MR.Waraon & Sairams Advocate SR.NO.41733
+ 1 cc to Mr p.Sukumar Advocate SR.NO.41705

NMS (CO)
RD 14.8.07

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